

Chapter 2 – Policy Requirements

A. IHFA Suspension Policy

The IHFA Suspension Policy has been revised to include four varying levels of suspension. Examples of each suspension level are given below. The list provided, however, is not intended to be comprehensive. Entities may be suspended for performance problems or other issues not listed as examples.

IHFA will hold all responsible parties – award recipients, subrecipients, and administrators - accountable for grant and/or loan performance. IHFA, in its sole discretion, may suspend or disbar individual persons as well as organizations from participation in IHFA funding programs.

IHFA reserves the right to alter the specific terms of a suspension for reasons including, but not limited to, an award recipient's, subrecipient's, or administrator's response to concerns, past performance history, and IHFA objectives.

Level 1 Suspension

Suspended from drawing funds and/or submitting applications until issue is resolved

- Staff recommendation – This could include, but is not limited to, a lack of performance on an existing award, entities unprepared for a compliance monitoring, or deficiencies noted during a review of required reporting.
- Any overdue IHFA required report including, but not limited to: Annual Rental Reports, or Trust Fund Beneficiary Reports. Reports will be considered overdue on the 10th calendar day following due date.
- An overdue monitoring response.
- Unresolved issues remaining after an award recipient's 2nd monitoring response.
- A property with code violations not corrected within the timeframe provided on the physical inspection report.
- A lapse in required builders risk or property insurance.
- An overdue loan payment. Payments will be considered overdue on the 10th calendar day following due date.
- Any overdue documentation required by IHFA.

Level 2 Suspension

Suspended from drawing funds and/or submitting applications for up to 6 months

- Any Level 1 Suspension that has remained uncorrected for 3 months.
- An award recipient serving over income clients.
- An award recipient not meeting beneficiary income commitments.
- Any loan payment overdue from an organization for the second time within 2 years.

Level 3 Suspension

Suspended from drawing funds and/or submitting applications for up to 5 years

- Any Level 2 Suspension that has remained uncorrected for 3 months.
- An award recipient with multiple compliance issues and/or repeated violations.
- An award recipient with egregious issues or that has committed negligent activities.
- Any loan payment overdue from an organization for third time within 2 years.

Level 4 Suspension

Permanent disbarment from all IHFA programs

- An award recipient that shows intentional disregard and violates IHFA and/or HUD regulations and policies.

B. Administrator Procurement

Administrators of IHFA awards are often not identified on the Housing From Shelters to Homeownership applications that are submitted to IHFA. While this action is not a violation of IHFA policy, the action of intentionally excluding an administrator from an application because of the possibility that this entity will not pass the required threshold review but then procuring that same entity after an award is made is of concern. Additionally, neither applicants nor recipients may contract with a related party of an entity ineligible to participate in the funding cycle as a means of avoiding IHFA's threshold requirements.

Subsequently, when an award administrator is procured after an IHFA award is made, this entity must meet IHFA approval. IHFA will evaluate the administrator in the following areas:

- **Threshold Criteria #8:** *IHFA reserves the right to disqualify from funding any application where the applicant, subrecipient, administrator, preparer or any of their related parties has a history of disregarding the policies, procedures, or staff directives associated with administering any IHFA program or programs of other State, Federal, or affordable housing entities, such as, but not limited to the Indiana Department of Commerce, U.S. Department of Housing and Urban Development (HUD), U.S. Department of Agriculture - Rural Development, or Federal Home Loan Bank. This includes being on the IHFA suspension list.*
- **Threshold Criteria #7:** *If an applicant, subrecipient, administrator, application preparer, or any of their related parties submits more than one CDBG or HOME Housing from Shelters to Homeownership application for separate housing activities in a single funding round and the combined request exceeds \$1,500,000, none of the submissions will be reviewed. IHFA will review the applications and the request amounts from the funding round in which the procuring organization was funded. The organization that is requesting to be procured as an administrator must be within the \$1,500,000 cap for that particular funding round.*
- **Threshold Criteria #5:** *The applicant, subrecipient, and administrator must pass IHFA's performance evaluation of time elapsed versus funds drawn as of the application deadline for all non-expired HOME or CDBG Housing from Shelters to Homeownership or HOME/RHTC/Bond awards for which it serves as an applicant, subrecipient, or administrator. This is calculated by taking the percent of time that has expired on an award starting forty-five (45) days after the date of the IHFA award letter and subtracting the percent of funds that have been expended. Funds expended will only count if the draw request is received by IHFA by the application deadline. Only whole months that have expired will be counted. Good (<0%) and acceptable (0-15%) ratings will pass threshold. Applicants with a poor (16-30%) rating will be carefully reviewed to determine performance capability. Applicants with unacceptable (>30%) performance will fail threshold. A six-month grace period will be allowed for new awards (i.e., For 6*

months after the board award date, awards will not be required to meet these same criteria). This criteria will be evaluated the day that the procuring organization requests approval of an administrator by IHFA.

A related party is defined as an entity that, either directly or indirectly, is wholly or partially owned or controlled by an applicant, subrecipient, administrator, or application preparer. And/or an entity in which an applicant, subrecipient, administrator, or application preparer has any financial interest.

Enclosed is the form that should be filled out and submitted to your IHFA Allocation Analyst when requesting to procure an award administrator after an award has been funded. The form is also available on IHFA's website at www.indianahousing.org.

The award recipient must receive IHFA approval prior to executing a contract with the administrator. Failing to receive approval may jeopardize receiving reimbursement for claims involving work conducted by the award administrator.

C. Loan Licensing

1. Indiana Department of Financial Institutions

The State of Indiana, Department of Financial Institutions, requires that any entity providing secondary financing that meet certain criteria must be licensed by the State of Indiana. The criteria are as follows:

- a. The loan must be issued in the entities name.
- b. The entity must be regularly engaged in making loans by issuing more the five (5) loans secured by a second mortgage (lien) or more than twenty-five (25) loans if not secured by a mortgage within a twelve (12) month period.
- c. The debt repayment or contractual obligation must be for a term of more than four (4) installments or impose a finance charge at repayment.

An application for a loan license as well as a brochure on lending is available at the Department of Financial Institutions website: www.dfi.state.in.us under consumer credit.

2. Nonprofit Participation in Single Family FHA Activities

The Department of Housing and Urban Development (HUD) requires that non-profits offering secondary financing (FHA,VA) meet certain criteria to participate in FHA Single Family activities. The Indiana Housing Finance Authority (IHFA) is sending out the enclosed information to our non-profit grantees currently offering down payment, homebuyer, and lease/purchase assistance to low-income persons.

HUD requires that the enclosed checklist with supporting documentation be submitted to its Atlanta office for approval to participate in Single Family FHA activities. Nonprofits wishing to provide FHA and VA loan products as secondary financing should check the third box on the checklist and supply the required information. This information should be returned as soon as possible to address list below:

Department of Housing and Urban Development
Atlanta Homeownership Center
Five Points Plaza
40 Marietta Street
Atlanta, Georgia 30303

D. Loan Closings

A title company is required to be used for all loans between the IHFA recipient and the beneficiary or sub-grantee of the program. For example, a local unit of government that chooses to provide owner-occupied rehabilitation funds as a loan, which is subject to recapture provisions, must use a title company when the loan is made to the homeowner. Another example is when an IHFA recipient is assisting a property that they do not own. Since all CDBG activities, with the exception of owner-occupied rehabilitation, are made as a loan from the local unit of government to another entity, a title company must be used.

E. 90-Day Rule

IHFA requires that all construction contracts, professional service contracts, and purchase agreements must be executed at least 90-days prior to award expiration. If you foresee a situation where this requirement may need to be waived, please contact your Compliance Monitor.

If at any time prior to monitoring IHFA has found that this rule has been violated, this would jeopardize IHFA funding in this development.

F. 99-year property lease

For all activities, if there is a long-term lease agreement on the property, a 99-year lease must be recorded in the county recorder's office of the county in which the property is located prior to award document preparation.

G. CDBG Public Hearings

All recipients of CDBG funds, regardless of award type, are required to conduct at least one public hearing at program completion in order to obtain citizen comment. A legal notice must be published to announce the meeting with minutes from the hearing retained for review at monitoring. It is acceptable to conduct the hearing during any regularly held public meeting, such as a town council meeting, provided all other requirements are met.

H. Leverage/Match

Leverage for CDBG awards is 10% of the total award amount.

The HOME program requires a twenty-five percent (25%) match. However, match for HOME awards under the 2004 Housing From Shelters to Homeownership Application Package has been established as 10% of the award, minus any Environmental Review and/or Operating Costs. Any amount of match that exceeds the requirement is eligible to be banked for future use. The final monitoring letter and Exhibit A of the close out documentation will state the banked match amount that IHFA has determined as eligible banked match. Any organization, including not-for-profit, CHDO and local unit of government, is permitted to share match with another

organization. Both organizations are required to complete the form found in Appendix I of the Application Package, which is then submitted with the award application. For information on acceptable forms of HOME and CDBG match, please contact your Compliance Monitor.

Match for Trust Fund awards is 5% of the total award mount.

Banked Match

If the applicant is proposing to utilize banked match for this activity:

- And it is the applicant's own banked match, the match liability on the previous award for which the match was generated must already be met and documented with IHFA for the match to be eligible as of the application due date. Only HOME-eligible match generated on IHFA awards made in 1999 or later are eligible to be banked.
- Or, if it is another recipient's match, the applicant must provide an executed agreement with the application verifying that the recipient is willing to donate the match. A boilerplate agreement is found in the Appendices.
 - Only banked match from awards made in 1999 or later that have fully met their match liability is eligible to donate to another applicant. The award must be closed before the agreement to donate match is executed.
- Match cannot be sold or purchased and is provided purely at the discretion of the recipient that generated it.
- Banked leverage generated on a CDBG award cannot be used as match on a future HOME award. Only banked match generated on a HOME award can be used on a future HOME award.

I. Lease Language/Program Agreements

Leases are required for awards assisting Transitional, Permanent Supportive, and Rental Housing. Leases, at a minimum, must include the following:

- Effective date of lease;
- End date of lease (must be for at least one year unless mutual agreement between tenant and owner for a shorter period);
- Amount of rent payment;
- Who pays the utilities;
- Termination Policy (must give at least 30 days notice);
- Renewal Process;
- Occupants of the lease;
- Signature of Tenant;
- Signature of Owner/Property Manager and
- Date of Execution

The lease may not contain any of the following language:

- Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
- Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the

tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

- Excusing owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
- Waiver of notice. Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
- Waiver of legal proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;
- Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
- Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

Emergency shelters and youth shelters are considered public facilities under CDBG regulations, therefore, no rent intends to be charged. Therefore, in lieu of a lease, recipients are required to implement a program agreement. This agreement is to provide residents with program guidelines, and should include, at a minimum, the following:

- Effective Date
- Both resident and staff's signature (Emergency Shelters Only)
- Supportive Services available
- Program guidelines, such as curfews, laundry and recreation rules
- Program expectations for resident
- Maximum length of stay
- Items regarded as contraband

J. Backend Development Package

Permanent Supportive and Rental housing award recipients will be required to submit a Backend Development Package with their close out documents (see Close Out chapter). IHFA will compare this information with the original application. If there are any changes that would have originally resulted in a lower award amount, the applicant may be required to repay a portion of the award.

K. Manufactured Housing Policy

A single dwelling unit designed and built in a factory, installed as a permanent residence, which bears a seal certifying that it was built in compliance with the Federal Manufactured Housing Construction and Safety Standards Law and which also complies with the following specifications:

<i>Manufactured Housing Checklist</i>	<i>Standard Requirements</i>
<i>Shall have been constructed after January 1, 1981 and must exceed nine hundred fifty (950) square feet of occupied space per I.C. 36-7-4-1106 (d);</i>	X
<i>Is attached to a permanent foundation of masonry construction and has a permanent perimeter</i>	X

<i>enclosure constructed in accordance with the One and Two Family Dwelling Code</i>	
<i>Has wheels, axles and towing chassis removed</i>	X
<i>Has a pitched roof</i>	X
<i>Consists of two (2) or more sections which, when joined, have a minimum dimension of 20' by 47.5' enclosing occupied space</i>	X
<i>Is located on land held by the beneficiary in fee-simple title, recorded land sale contract, or 99-year leasehold and is the principal residence of the beneficiary</i>	X

All other manufactured or mobile homes that do not meet the aforementioned criteria are ineligible to receive rehabilitation assistance on projects funded by the Indiana Housing Finance Authority.

Manufactured Housing (double-wide) is a very common form of housing for low to moderate-income families. A significant percentage of the housing stock in small rural communities consists of doublewide manufactured homes. Local discretion is allowed if the manufactured housing meets the criteria set forth in the above definition.

Code of Federal Regulations

24 CFR Part 570.202 Eligible Rehabilitation and Preservation Activities:

- (4) Manufactured housing when such housing constitutes part of the community's permanent housing stock.

24 CFR 882.102, Paragraph (4)

Manufactured Housing Units. Notwithstanding whether they are classified as real or personal property under applicable State law, manufactured housing units may be assisted under the following conditions.

- (i) The unit is on a permanent foundation;
- (ii) The utility hook-ups are permanent;
- (iii) The unit is designed for use as a permanent residence;
- (iv) The unit also meets the Section 8 Housing Quality Standards for Manufactured Homes set forth in 24 CFR 882.109 (o).

24 CFR 882.109(o), Manufactured Home

- (1) Performance requirement. A manufactured home unit, whether owner or rental occupied, shall comply with the foregoing standards except for paragraph (m) of this section, Congregate Housing, and paragraph (n) of this section, Independent Group Residences. In addition, a Manufactured Home Unit shall:
 - (a) Meet the definition of a Manufactured Home set forth in §882.102,
 - (b) Be equipped with at least one (1) smoke detector in working condition; and
 - (c) Must be placed on the site in a stable manner and be free from hazards such as sliding or wind damage.

- (2) Acceptability criteria. A Manufactured Home must be securely anchored by a tie-down device which distributes and transforms the loads imposed by the unit to appropriate ground anchors to resist wind over-turning and sliding.

L. Subordination Policy

IHFA will subordinate to the point when the HOME loan plus other financing is at an amount not to exceed 100% of the cost of construction.

If subordination beyond one hundred percent (100%) is necessary, the request will be entertained on a case-by-case basis. These written requests should be forwarded to your Compliance Monitor.

M. Exhibits

- A Award Administrator Approval Form